

# HOUSE . . . . . No. 3638

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Kevin G. Honan**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to promote school zone safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kevin G. Honan	17th Suffolk
Mayor Thomas M. Menino	One City Hall Square, Suite 500 Boston, MA 02201
Angelo J. Puppolo, Jr.	12th Hampden

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT TO PROMOTE SCHOOL ZONE SAFETY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 90 of the General Laws is hereby amended by adding the following new section:-

Chapter 90, Section 33C. Safety devices, school zones.

### SECTION 1.

(a) Notwithstanding the provisions of any general or special law to the contrary, cities and towns may, upon the acceptance of this act, employ a violation monitoring system to (1) measure speed limit violations within designated school zones; and, (2) capture violations in conjunction with traffic signals deployed by school busses and school vans. Further, cities and towns may promulgate local measures imposing a penalty on the owner of a motor vehicle for failure by the operator thereof to comply with the laws, codes, regulations, ordinances, rules and/or other forms of legislation governing the traffic control signals in said cities and towns in which a violation monitoring system is located.

(b) As used in this act, the following words shall, unless the content clearly indicates otherwise, have the following meanings:

"Local measure", shall mean the ordinances, rules and regulations adopted by cities and towns, whichever is applicable, establishing a schedule of fines imposed on the owner of a motor vehicle for failure by the operator thereof to comply with the laws, codes, regulations,

ordinances, rules and/or other forms of legislation governing the traffic control signals in said cities and towns at which a traffic control signal violation monitoring system is located.

"Motor vehicle", shall have the meaning provided in section 1 of chapter 90 of the General Laws.

"Operator", shall have the meaning provided in section 1 of chapter 90 of the General Laws.

"Owner", shall have the meaning provided in section 1 of chapter 90 of the General Laws.

"Violation monitoring system", shall mean an automated motor vehicle sensor device that produces two or more wet-film photographs, two or more digital photographs, two or more microphotographs, streaming video images, or other recorded images of each motor vehicle at the time it is used or operated in a manner that is in violation of school zone speed limits and school bus activated stop signals.. The photographs, microphotographs, streaming video images, or other recorded images must, at a minimum, record the rear of the motor vehicle, with at least one of the images clearly recording the motor vehicle immediately prior and following the violation. Additionally, at least one of the images must clearly identify the registration plate of the motor vehicle.

"Violation", shall mean the failure of an operator of a motor vehicle to comply with the laws, codes, regulations, ordinances, rules and/or other forms of legislation governing the speed limits posted in school zones and stop signals located on school busses.

(c) No violation monitoring system shall be utilized in such a manner as to take a frontal view photograph of the motor vehicle that is in violation.

(d) A certificate, or a facsimile thereof, based upon inspection of photographs, microphotograph, streaming video, or other recorded images produced by a violation monitoring system, and sworn to or affirmed by a police officer authorized to issue citations shall be prima facie evidence of the facts contained therein. No photographs, microphotographs, streaming video, or other recorded images taken in conformance with this act shall be discoverable in any judicial or administrative proceeding other than a proceeding held pursuant to this act; and no photographs, microphotographs, streaming video, or other recorded images taken in conformance with this act shall be admissible in any judicial or administrative proceeding other than in a proceeding to adjudicate liability for such violation of this act.

(e) For each violation pursuant to this act, the owner or owners of a vehicle shall be liable for the penalty imposed by a local measure; provided, however, that no owner of a vehicle shall be liable for a penalty imposed pursuant to this act where the operator of such vehicle has been convicted of the underlying violation pursuant to a citation issued in accordance with section 2 of chapter 90C of the General Laws, and provided, further, that the maximum penalty that may be imposed pursuant this act shall be One Hundred Dollars (\$100.00) for each violation.

(f) A penalty imposed by a local measure may, if so provided in the local measure, be increased by up to 33 1/3% if said fine remains unpaid in excess of 30 days after a notice of violation has been issued consistent with the procedures established in section 20A 1/2 of chapter 90 of the General Laws.

(g) A penalty imposed by a local measure for a violation pursuant to this act shall not be deemed a criminal conviction and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall such imposition of a penalty be subject to merit rating for insurance purposes and no surcharge points shall be imposed in the provision of motor vehicle insurance coverage.

SECTION 2. (a) The compensation paid to the manufacturer or vendor of the violation monitoring system deployed as a means of promoting traffic safety as authorized herein shall not be based upon the number of traffic citations issued or any portion or percentage of the fine generated by such citations. The compensation paid to such manufacturer or vendor of the equipment shall be based upon the value of such equipment and the services provided or rendered in support of the violation monitoring system.

(b) Other than for purposes of enforcement of a violation of this act or for purposes of an owner defending a violation of this act, no private entity or individual may obtain photographs, microphotographs, streaming video or other recorded images or records taken pursuant to this act.

SECTION 3. (a) The parking clerk designated or appointed by the municipality shall supervise and coordinate the administration of violations issued pursuant to Section 1. The parking clerk shall have the authority to hire and designate such personnel as may be necessary or contract for such services to implement the provisions of this section.

(b) It shall be the duty of the parking clerk of the city employing its violation monitoring system to deliver the notice of violation to the registered owner or owners of any motor vehicle identified in any photographs, microphotographs, streaming video or other recorded images produced by such device as evidence of a violation pursuant to this act. Such notice shall contain but not be limited to the following information: a copy of the aforementioned recorded images showing the vehicle in violation, the registration number and state of issuance of said registration number of the vehicle; the date, time and location of the violation; the specific violation charged; a schedule of fines for such violation as established by the city or town; instructions for the return of the notice; and text as follows: "This notice may be returned personally, by mail, or by an agent authorized in writing. A hearing may be obtained upon the written request of the registered owner in writing. Failure to obey this notice within 30 days of issuance of this notice will result in the non-renewal or suspension of the license to drive and the certificate of registration of the registered owner."

(c) In the case of a violation involving a motor vehicle registered under the laws of the Commonwealth, such notice of violation shall be mailed within 14 days of the violation, exclusive of Sundays and holidays, to the address of the registered owner or owners as listed in the records of the registrar of motor vehicles. In the case of any motor vehicle registered under the laws of another state or country, such notice of violation shall be mailed within 21 days of the violation, exclusive of Sundays and holidays, to the address of the registered owner or owners as listed in the records of the official in such state or country having charge of the registration of such motor vehicle. If said address is unavailable, it shall be sufficient for the parking clerk to mail notice of violation to the official in such state or country having charge of the registration of such motor vehicle.

(d) Notice of violation shall be sent by first class mail in accordance with subsection 3(c) and shall include an affidavit form approved by the parking clerk for the purpose of complying with subsection 3(g). A manual or automatic record of mailing prepared by the parking clerk in the ordinary course of business shall be prima facie evidence thereof, and shall be admitted as evidence in any judicial or administrative proceeding, as to the facts contained therein.

(e) Any motor vehicle owner to whom notice of violation has been issued pursuant to this act may admit responsibility for such violation and pay the fine provided therein. Payment shall be made either personally or through a duly authorized agent, or by appearing before the parking clerk during normal office hours, or by mailing both payment and notice of the violation to the

107 parking clerk. Payment by mail shall be made only by money order, credit card or check made  
108 out to the parking clerk. Payment of the established fine and any applicable penalties shall  
109 operate as a final disposition of the case. Payment of the fine by one motor vehicle owner shall  
110 be satisfaction of the fine as to all other motor vehicle owners of the same motor vehicle for the  
111 same violation.

112 (f) Any owner to whom a notice of violation has been issued may, within 30 days of the  
113 mailing of said notice by the parking clerk, request a hearing to contest the liability alleged in  
114 said notice. A hearing request shall be made either personally or through a duly authorized agent  
115 by appearing before the parking clerk during regular business hours or by mailing a request in  
116 writing to the parking clerk. Upon receipt of a hearing request, the parking clerk shall forthwith  
117 schedule the matter before a person hereafter referred to as a hearing officer, said hearing officer  
118 to be the parking clerk of the city wherein the violation occurred or such other person or persons  
119 as the parking clerk may designate. Written notice of the date, time and place of said hearing  
120 shall be sent by first class mail to each registered owner. Said hearing shall be informal, the rules  
121 of evidence shall not apply, and the decision of the hearing officer shall be final subject to  
122 judicial review as outlined by section 14 of Chapter 30A of the General Laws. Within twenty-  
123 one days of the hearing, the parking clerk or the hearing officer should send by first class mail to  
124 the registered owner or owners the decision of the hearing officer, including the reasons for the  
125 outcome.

126 (g) Any owner to whom a notice of violation has been issued shall not be liable for a  
127 violation under the provisions of this act: (1) if the violation was necessary to allow the passage  
128 of an emergency vehicle; (2) if the violation was necessary in order to protect the property or  
129 person of another; (3) if the violation was incurred while participating in a funeral procession;  
130 (4) if the violation was incurred during a period of time in which the motor vehicle was reported  
131 to the police department of any state, city or town as having been stolen and had not been  
132 recovered prior to the time the violation occurred; (5) if the operator of the motor vehicle was  
133 operating the motor vehicle under a rental or lease agreement and the owner of the motor vehicle  
134 is a rental or leasing company and has complied with the provisions of section 20E of chapter 90  
135 of the General Laws; (6) if the operator of the motor vehicle was convicted of the underlying  
136 violation pursuant to a citation issued in accordance with section 2 of chapter 90C of the General  
137 Laws; or (7) if the violation was necessary to comply with any other law or regulation governing  
138 the operation of a motor vehicle during the time of violation. An owner disputing a violation

under this section shall, within 30 days, provide the parking clerk with a signed affidavit in a form approved by the parking clerk, as provided for in subsection 3(d), stating (1) the reason for disputing the violation; (2) the full legal name and address of the owner of the motor vehicle; (3) the full legal name and address of the operator of the motor vehicle at the time the violation occurred; (4) the names and addresses of all witnesses supporting the owner's defense and the specifics of their knowledge; and where applicable (5) the signed statements from witnesses.

(h) If an owner to whom notice of violation has been issued either fails to pay the fine provided for in said notice in accordance with subsection 3(e), or fails to receive a favorable adjudication of said notice from a hearing officer in accordance with subsection 3(f), the parking clerk shall notify the registrar of motor vehicles who shall place the matter on record. Upon notification to the registrar of two or more notices under this act and/or sections 20A and 20A 1/2 of chapter 90 of the General Laws from the parking clerk of either city or state authorities or agencies, the registrar shall not issue or renew or may suspend such owner's license to operate a motor vehicle or motor vehicle registration until after notification from the parking clerk of each city, agency or authority, from whom the registrar received notification, that all fines, taxes and penalties owed by such owner pursuant to either this section, or arising out of the parking or usage of such owner's motor vehicles, have been disposed of in accordance with law. Upon such notification to the registrar, an additional charge of \$20 payable to the registrar but collected by the city, and an additional charge of \$20 payable to and collected by the city, shall be assessed against the registered owner of said motor vehicle. It shall be the duty of the parking clerk to notify the registrar forthwith that such case has been so disposed; provided, however, that certified receipt of full and final payment from the parking clerk of the city or state agency or authority issuing such violation shall also serve as legal notice to the registrar that said violation has been disposed of in accordance with law. The certified receipt shall be printed in such form as the registrar of motor vehicles may approve.

(i) Upon the accumulation by an owner of five or more outstanding notices under this act and/or sections 20A and 20A 1/2 of chapter 90 of the General Laws on account of violations of any statute, ordinance, order, rule or regulation relating to the operation, control or parking of motor vehicles in a particular city, notwithstanding any notification to the registrar, the parking clerk of such city may notify the chief of police or director of traffic and parking of such city that the vehicle bearing the registration to which said notices have been issued shall be removed and stored or otherwise immobilized by a mechanical device at the expense of the registered owner

of such vehicle until such time as all fines, taxes and penalties owed by such owner pursuant to either this section, or arising out of the parking or usage of such owner's motor vehicle have been disposed of in accordance with law. No vehicle shall be removed, stored, or otherwise immobilized until and unless the owner of such motor vehicle shall have received 10 days notification by mail that such motor vehicle may be removed, stored, or immobilized without further notification. It shall be sufficient for the parking clerk to mail, postage prepaid, said notification to the last known address of the registered owner. It shall be sufficient for the parking clerk, in the case of a motor vehicle registered in another state or country, to mail notification to the official in such state or country having charge of the registration of such motor vehicle.

(j) Photographic and other recorded evidence obtained through the use of violation monitoring system deployed as a means of promoting traffic safety authorized herein within cities and towns shall be destroyed within 1 year of final disposition of any recorded event. Said cities shall file notice annually with the Secretary of State that said records have been destroyed in accordance with this section.